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IN THE

Supreme Court of the United States

BOBBY JAMES MOORE,

Petitioner,

v.

TEXAS,

Respondent.

On Petition for a Writ of Certiorari to the Court of Criminal Appeals of Texas

BRIEF OF INTERNATIONAL LAW AND HUMAN RIGHTS INSTITUTES, SOCIETIES, PRACTITIONERS AND SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI

(*Amici* Listed On Inside Cover)

LUCY MARTINEZ
ANASTASIA DAVIS BONDARENKO
THREE CROWNS LLP
New Fetter Place
8-10 New Fetter Lane
London, EC4A1AZ
United Kingdom
+44 (203) 530-7959
lucy.martinez@
threecrownsllp.com

CONSTANCE DE LA VEGA
Counsel of Record
UNIVERSITY OF
SAN FRANCISCO
SCHOOL OF LAW
2130 Fulton Street
San Francisco, CA 94117
(415) 422-2296
delavega@usfca.edu

Counsel for Amici Curiae

January 19, 2016

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

LIST OF *AMICI* AND ADDITIONAL COUNSEL

Amici Organizations

1. Bar Human Rights Committee of England and Wales
2. European Criminal Bar Association
3. Human Rights Advocates
4. Human Rights Institute, Columbia Law School, Columbia University (New York)
5. Human Rights Institute of the Paris Bar Association / Institut des Droits de l'Homme du Barreau de Paris
6. Human Rights League / Ligue des Droits de l'Homme (France)
7. International Bar Association's Human Rights Institute
8. International Federation for Human Rights / Fédération Internationale des ligues des Droits de l'Homme (FIDH)
9. National Bar Council / Le Conseil National des Barreaux (France)
10. Paris Bar / Le Barreau de Paris

Amici Individuals

11. The Hon. Louise Arbour C.C., G.O.Q., Counsel at Borden Ladner Gervais LLP; former UN High Commissioner for Human Rights; former Justice of the Supreme Court of Canada

12. Emeritus Professor Robert Badinter, Paris I University (Panthéon - Sorbonne); former Minister of Justice (France); former President of the Constitutional Council of France
13. Professor Brian Burdekin AO, Professorial Visiting Fellow, University of New South Wales, Australia; Visiting Professor, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Sweden; former Federal Human Rights Commissioner of Australia
14. Professor David Caron, Dean and Professor of Law, The Dickson Poon School of Law, King's College, London; former President of the American Society of International Law
15. Professor Sarah H. Cleveland, Louis Henkin Professor of Human and Constitutional Rights, Columbia Law School; Member of UN Human Rights Committee (signing in her personal capacity)
16. Mark George QC, Garden Court North Chambers, Manchester
17. Professor Guy S. Goodwin-Gill, Emeritus Fellow, All Souls College, University of Oxford
18. Professor Carolyn Hoyle, Director, Centre for Criminology, University of Oxford
19. Professor Julian Killingley, Professor of American Public Law, Centre for American Legal Studies, School of Law, Birmingham City University
20. Professor Robert McCorquodale, Director of the British Institute of International and Comparative Law
21. Professor Juan Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman and

Degrading Treatment or Punishment (*UN Special Rapporteur on Torture*)*; Professor of Human Rights Law in Residence at American University

22. Geoffrey Robertson QC, Founder and Joint Head of Doughty Street Chambers (London)

23. Emeritus Professor Sir Nigel Rodley KBE, Chair of the Human Rights Centre, University of Essex; President of International Commission of Jurists; Member of UN Human Rights Committee; former UN Special Rapporteur on Torture

24. Professor William Schabas, Professor of International Law, Middlesex University (London); Consultant on capital punishment for United Nations Office of Drugs and Crime; Drafter of 2010 and 2015 reports of UN Secretary-General on status of death penalty

25. Professor Theo van Boven, Honorary Professor of International Law at University of Maastricht; former UN Special Rapporteur on Torture; former U.N. Director of Human Rights

26. Dr Philippa Webb, Reader (Associate Professor) in Public International Law, King's College London; Member of International Advisory Panel for American Law Institute's project *Restatement Fourth, Foreign Relations Law* of the United States

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* This brief is submitted by the UN Special Rapporteur on Torture without prejudice to, and should not be considered an express or implied waiver of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

Additional Counsel

Constantine Partasides QC, Penny Martin and Mark Wassouf (Admitted in England and Wales)
Three Crowns LLP, London

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

STATEMENT OF INTEREST[1]

Amici are international law and human rights institutes, societies, associations, organizations, practitioners, and/or scholars. *Amici* hereby request that this Court consider the present brief pursuant to Supreme Court Rule 37.2(a) in support of Petitioner's petition for certiorari. The interests of *Amici* are described in detail in the Appendix. Many of the individual *Amici* were personally involved in the international and foreign law authorities cited in this brief. Many of the *Amici* organizations have engaged this Court, and other courts and tribunals around the world, in defense of the rule of law and individual rights, especially the advancement of human rights. *Amici* respectfully urge this Court to consider these international and foreign law authorities in determining this petition.

STATEMENT OF THE CASE

For the purposes of this brief, *Amici* adopt the statement of facts in the Petition for a Writ of Certiorari filed by Bobby James Moore on December 15, 2015.

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[1] Pursuant to Rule 37.6, *Amici* confirm that no counsel for a party authored this brief in whole or in part, and no person other than *Amici*, their members, and/or their counsel has made a monetary contribution intended to fund the preparation or submission of the brief. *Amici* timely notified all parties of their intention to file this brief, and, pursuant to Rule 37.2(a), confirmation of consent from all parties to the filing of this brief has been submitted to the Clerk of the Court.

SUMMARY OF ARGUMENT

The United States Supreme Court has its own rich jurisprudence regarding the definition and scope of "cruel and unusual punishments" under the Eighth Amendment to the Constitution. As this Court has a long history of having regard to international and foreign jurisprudence, this brief summarizes the available jurisprudence.

Amici submit that execution following prolonged detention violates constitutional rights and/ or international human rights norms which are broadly the same as those protected by the Eighth Amendment. Clear consensus has emerged in international and regional courts and institutions around the world that execution of those subject to prolonged incarceration under a death sentence is unconstitutional and/ or in violation of international human rights norms, because it adds a significant degree of suffering and punishment over and beyond the judicial sanction of the death sentence itself, and accordingly amounts to cruel, unusual, inhuman and/or degrading treatment. Put simply, such treatment is an affront to the human dignity of the convicted. This harm is aggravated when the convicted is also subjected to extended periods of solitary confinement.

As two judges on the Judicial Committee of the Privy Council (Privy Council)[2] have noted:

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[2] The Privy Council sits in the United Kingdom and is the final court of appeal for several independent Commonwealth countries, British overseas territories and British Crown dependencies, including Commonwealth countries in the Caribbean, with the exception of Barbados, Belize and Guyana.

> It is no exaggeration . . . to say that the jurisprudence of the civilised world, much of which is derived from common law principles and the prohibition against cruel and unusual punishments in the English Bill of Rights, has recognised and acknowledged that prolonged delay in executing a sentence of death can make the punishment when it comes inhuman and degrading.

Riley v. Att'y-Gen. of Jamaica, [1983] 1 A.C. 719 (P.C.) 735 (citations omitted).[3]

Moreover, courts around the world have recognized that the penological purposes of the death penalty - namely, deterrence and retribution - are not served when execution occurs after an excessively long period of incarceration under a death sentence. These courts have also recognized that the convicted cannot be criticised for exploring any available legitimate legal avenue.

These general conclusions of numerous jurisdictions are particularly compelling in the present case. The circumstances of Mr. Moore's detention awaiting execution are unusually extreme: he has been on death row for some 35 years, and held in solitary confinement ("administrative segregation") since 2001: 14 years of spending approximately 22.5 hours per day, every day, alone in his cell. Twice in these 35 years, the State has signed death warrants and set his execution date; one death warrant was stayed less than 24 hours before he

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[3] Dissenting judgment of Lords Scarman and Brightman, cited in *Glossip v. Gross*, 135 S.Ct. 2726, 2767 (2015) (Breyer, J., dissenting). In 1993, the Privy Council accepted this view. See Section B below.

was to be executed, and the other five days before the scheduled execution date.

Amici submit that to execute Mr. Moore after 35 years, and after he has spent 14 years of this period in solitary confinement, would constitute cruel and unusual punishment (or the equivalent legal standard) under any of the national, regional and international legal systems discussed herein. Indeed, the delay in Mr. Moore's case far exceeds the periods of time found to be unacceptable in other jurisdictions.

ARGUMENT

A. The role of international and foreign jurisprudence in interpreting the U.S. Constitution

International law and opinion, and the practice of other nations, have informed the laws of the United States from the Declaration of Independence through to today. Indeed, the Declaration of Independence itself speaks of the relevance of other nations:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, *a decent respect to the opinions of mankind* requires that they should declare the causes which impel them to the separation.

THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776) (emphasis added).

In urging courts to afford the "decent respect to the opinions of mankind" required by the Declaration of Independence, Justice Blackmun explained that:

> [T]he early architects of our Nation understood that the customs of nations—the global opinions of mankind—would be binding upon the newly forged union. John Jay, the first Chief Justice of the United States, observed . . . that the United States "had, by taking a place among the nations of the earth, become amenable to the laws of nations."

Harry A. Blackmun, *The Supreme Court and the Law of Nations*, 104 Yale L.J. 39, 39 (1994-1995) (citation and footnotes omitted).

Consistent with the approach of the Founders, this Court has repeatedly recognized the relevance of international norms to the evolution of societal norms and to the scope and content of Constitutional rights,[4] including the Eighth Amendment. For example, in

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[4] *See also, e.g.*, *Paquete Habana*, 175 U.S. 677, 700 (1900) (Gray, J., delivering opinion of Court) ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations . "); Ruth Bader Ginsburg & Deborah Jones Merritt, *Fifty-First Cardozo Memorial Lecture—Affirmative Action: An International Human Rights Dialogue*, 21 Cardozo L. Rev. 253, 282 (1999-2000) ("comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights.") (emphasis in original).

Roper v. Simmons, 543 U.S. 551 (2005), in abolishing executions for juvenile offenders, the Court noted:

> [A]t least from the time of the Court's decision in *Trop* [1958], the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual punishments.". . .
>
> . . . .
>
> It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty . . . . See Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* . . . . The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.

Id. at 575, 578.[5]

Other examples of the Court considering international and foreign law in relation to the death penalty include:

- *Atkins v. Virginia*, 536 U.S. 304, 317 n.21 (2002): "within the world community, the imposition of the death penalty for crimes

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[5] *See also Roper v. Simmons*, 543 U.S. 551, 604 (2005) (O'Connor, J., dissenting) ("[o]ver the course of nearly half a century, the Court has consistently referred to foreign and international law as relevant to its assessment of evolving standards of decency.").

committed by mentally retarded offenders is overwhelmingly disapproved."

- *Thompson v. Oklahoma*, 487 U.S. 815, 830 & n.31 (1988): "The conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community. . . . We have previously recognized the relevance of the views of the international community in deter-mining whether a punishment is cruel and unusual."

- *Enmund v. Florida*, 458 U.S. 782, 796-97 n.22 (1982): "'[T]he climate of international opinion concerning the acceptability of a particular punishment' is an additional consideration which is 'not irrelevant.' *Coker v. Georgia*, 433 U.S. 584, 596, n. 10 (1977)." Also "noting that the doctrine of felony murder has been abolished in England and India, severely restricted in Canada and a number of other Commonwealth countries, and is unknown in continental Europe."

- *Coker v. Georgia*, 433 U.S. 584, 596 n.10 (1977): considering "the climate of international opinion concerning the acceptability of a particular punishment," (citing *Trop v. Dulles*, 356 U.S. 86, 102 (1958)) and noting that it was "not irrelevant here that out of 60 major nations in the world . . . only 3

retained the death penalty for rape where death did not ensue."

- *Trop v. Dulles*, 356 U.S. 86, 102 (1958) (Warren, J., plurality opinion): "The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime."

B. The origins of the Eighth Amendment: the 1689 English Bill of Rights prohibits execution after an excessively long period of incarceration under a death sentence

The Constitutional provision at issue in this case, the Eighth Amendment's prohibition on "cruel and unusual punishments inflicted," traces its origins to the laws of another nation. The phrase was taken directly from the English Bill of Rights of 1689, and had its origins in the Magna Carta. *See, e.g., Trop v. Dulles*, 356 U.S. 86, 100 (1958) (Warren, J., plurality opinion) (referring to "the Anglo-American tradition of criminal justice."); *Harmelin v. Michigan*, 501 U.S. 957, 966 (1991) (Scalia, J., plurality opinion); *Gregg v. Georgia*, 428 U.S. 153, 169-70 (1976); *Weems v. United States*, 217 U.S. 349, 371-72 (1910) (McKenna, J., delivering the opinion of the Court) (discussing English law). *Id.* at 389 (White, J., dissenting) (referring to, *inter alia*, the Eighth Amendment's "origin in the mother country, and the meaning there given to it prior to the American Revolution; . . . ."); *In re Kemmler*, 136 U. S. 436, 446 (1890).

As the Court stated in *Roper v. Simmons*, 543 U.S. 551, 577 (2005):

> [I]t is instructive to note that the United Kingdom abolished the juvenile death penalty

> before these [international] covenants [prohibiting the practice] came into being. The United Kingdom's experience bears particular relevance here in light of the historic ties between our countries and in light of the Eighth Amendment's own origins. The Amendment was modeled on a parallel provision in the English Declaration of Rights
> . . . .

The phrase "cruel and unusual punishment" in the 1689 Bill of Rights was intended to ensure "fairness" in respect of both the type and length of punishment:

> The English evidence shows that the cruel and unusual punishments clause of the Bill of Rights of 1689 was first, an objection to the imposition of punishments which were unauthorized by statute and outside the jurisdiction of the sentencing court, and second, a reiteration of the English policy against disproportionate penalties.

Anthony F. Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57(4) Cal. L. Rev. 839, 860 (1969).

This is particularly relevant in light of the Court's conclusion that "the Eighth Amendment's ban on cruel and unusual punishment embraces, at a minimum, those modes or acts of punishment that had been considered cruel and unusual at the time that the [1791 U.S.] Bill of Rights was adopted." *Ford v. Wainwright*, 477 U.S. 399, 405 (1986). In this context, it is instructive to note that Great Britain's "Murder Act" of 1751 prescribed that execution take place on the next day but one after sentence. *See Pratt v. Att'y-Gen. for Jamaica*, [1994] 2 A.C. 1, (P.C.) 18;

see also Brent E. Newton, *The Slow Wheels of* Furman's *Machinery of Death*, 13 J. App. Prac. & Process 41, 55-57 & nn.64-70 (2012), noting the "prevailing view in England and the colonies at the time of America's independence" that delays of "several months" of confinement under a death sentence would be cruel and unusual punishment. Thus, the original understanding of the Eighth Amendment in 1791 would have prohibited prolonged periods of incarceration under a death sentence, followed by execution.

This is consistent with the 1983 opinion of two judges in the Privy Council, Lords Scarman and Brightman:

> [T]here is a formidable case for suggesting that execution after inordinate delay would have infringed the prohibition against cruel and unusual punishments to be found in section 10 of the Bill of Rights 1689.
>
> Such research as we have been able to conduct shows that many judges in other countries have recognized the inhumanity and degradation a delayed death penalty can cause. We cite four instances (but there are many others). . . . (Citations to U.S., India, and European Court of Human Rights omitted.)
>
> It is no exaggeration, therefore, to say that the jurisprudence of the civilized world, *much of which is derived from common law principles and the prohibition against cruel and unusual punishments in the English Bill of Rights,* has recognized and acknowledged that prolonged delay in executing a sentence

> of death can make the punishment when it comes inhuman and degrading.

Riley v. Att'y-Gen. of Jamaica, [1983] 1 A.C. 719 (P.C.) 734-35 (emphasis added).[6]

Subsequent decisions of the Privy Council have recognized the core principles underlying the 1689 Bill of Rights.[7] The seminal decision is *Pratt v. Attorney-General for Jamaica*, [1994] 2 A.C. 1 (P.C.), where the Privy Council held that to execute the applicants after a prolonged delay on death row of 14 years was unconstitutional. *Id.* at 33.[8] Lord Griffiths, delivering the judgment of the Court, said:

> It is difficult to envisage any circumstances in which in England a condemned man would have been kept in prison for years awaiting execution. But if such a situation had been brought to the attention of the court their Lordships do not doubt that the judges would have stayed the execution to enable the prerogative of mercy to be exercised and the

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[6] Dissenting opinion cited by Justice Breyer (in dissent) in *Glossip v. Gross*, 135 S.Ct. 2726, 2767 (2015) and adopted in *Pratt v. Attorney-General for Jamaica*, discussed below.

[7] See *supra* footnote 2 regarding the Privy Council, which is a regional Commonwealth court (as opposed to a domestic U.K. court).

[8] In *Riley* and *Pratt*, the relevant standard was Section 17(1) of the Jamaica Constitution: "[n]o person shall be subjected to torture or to inhuman or degrading punishment or other treatment." *Pratt* was cited by this Court in, *e.g.*, *Lackey v. Texas*, 514 U.S. 1045 (1995) (Stevens, J., respecting denial of certiorari); *Foster v. Florida*, 537 U.S. 990, 992 (2002) (Breyer, J., dissenting); *Glossip v. Gross*, 135 S.Ct. 2726, 2767, 2769 (2015) (Breyer, J., dissenting).

> sentence commuted to one of life imprisonment.

Id. at 19.

In reaching its conclusion that execution following many years after sentence would be unconstitutional, the Privy Council noted:

> There is an instinctive revulsion against the prospect of hanging a man after he has been held under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity; we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time.

Id. at 29.[9]

The Privy Council concluded:

> The total period of delay is shocking and now amounts to almost 14 years. . . .
>
> To execute these men now after holding them in custody in an agony of suspense for so many years would be inhuman punishment. . . . In the last resort the courts have to accept the responsibility of saying whether the threshold has been passed in any given case and there may be difficult borderline decisions to be made. This, however, is not a borderline case. The delay in this case is

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[9] *See also Pratt v. Att'y-Gen. for Jamaica*, [1994] 2 A.C. 1 (P.C.), 18 (quoting Mr. Winston Churchill: "[P]eople ought not to be brought up to execution, or believe that they are to be executed, time after time whether innocent or guilty, however it may be, whatever their crime. This is a wrong thing.").

> wholly unacceptable and this appeal must be allowed.

Id. at 33.

In *Pratt*, the Privy Council held that execution after more than a five-year period of incarceration under a death sentence was unconstitutional (although the actual case before the court involved 14 years). In later cases, the Privy Council found that four-years and ten months was unconstitutional, and stated that the five-year rule in *Pratt* "was not intended to provide a limit, or a yardstick . . . ." *Guerra v. Baptiste*, [1996] 1 A.C. 397 (P.C.) 414. In 2000, the Privy Council affirmed the key findings in *Pratt*, namely that "execution after excessive delay" was an "inhuman punishment because it add[s] to the penalty of death the additional torture of a long period of alternating hope and despair." *Higgs v. Minister of Nat'l Sec.*, [2000] 2 A.C. 228 (P.C.) 247 (appeal taken from Bah.).

English law has also long confirmed the dangers of extended periods of solitary confinement under a death sentence. For example, in *In re Medley*, 134 U.S. 160, 170 (1890), this Court discussed the "statutory history of solitary confinement in the English law", and noted that solitary confinement:

> was considered as an additional punishment of such a severe kind that it is spoken of in the [statutory] preamble as 'a further terror and peculiar mark of infamy' to be added to the punishment of death. In Great Britain, as in other countries, public sentiment revolted against this severity, and by the statute of 6 and 7 William IV. c. 30, the additional punishment of solitary confinement was repealed.

This Court also noted that

> when a prisoner sentenced by a court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it, which may exist for the period of four weeks, as to the precise time when his execution shall take place. *Id.* at 172.

In light of the historical connections between the Eighth Amendment and the English Bill of Rights, these cases are particularly persuasive. As explained below, these authorities have been echoed by numerous international, regional and domestic courts and tribunals.

C. Other jurisdictions confirm that to carry out the death penalty after an excessively long period constitutes cruel and unusual punishment

1. European Court of Human Rights

Article 3 of the European Convention on Human Rights (*ECHR*) provides: "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."[10] In interpreting this provision, the European Court of Human Rights (*ECtHR*) has long recognized the cruel and unusual nature of prolonged

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[10] Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953).

death row detention. The leading case is *Soering v. United Kingdom*, App. No. 14038/88, 11 Eur. H.R. Rep. 439 (1989).[11] In this case, the ECtHR held that the extradition of a person to the U.S. would violate Article 3 of the ECHR, due to the circumstances in which a "condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death." *Id.* ¶ 106.

The ECtHR noted:

> In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate punishment . . . . In this connection, account is to be taken not only of the physical pain experienced but also, *where there is a considerable delay before execution of the punishment, of the sentenced person's mental anguish of anticipating the violence he is to have inflicted on him.*
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> . . . .

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[11] Cited in, *e.g.*, *Foster v. Florida*, 537 U.S. 990, 992 (2002) (Breyer, J., dissenting); *Glossip v. Gross*, 135 S.Ct. 2726, 2767 (2015) (Breyer, J., dissenting). This Court has looked to ECtHR decisions in other contexts. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 576 (2003) (citing ECtHR decisions, also referring to "values we share with a wider civilization" and actions taken by "[o]ther nations . consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct.").

> The manner in which [the death penalty] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (art. 3). . . .
>
> . . .
>
> For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable. . . .
>
> However, in the Court's view, having regard to the *very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty*, and to the personal circumstances of the applicant, *especially his age and mental state at the time of the offence*, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 (art. 3). A further consideration of relevance is that in the particular instance the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration.

Id. ¶¶ 100-01, 104, 111 (emphasis added).

In relation to solitary confinement, the ECtHR has confirmed that sensory and social isolation "can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason."[12] The ECtHR has described solitary confinement as "a form of 'imprisonment within the prison'" to be imposed "only exceptionally and after every precaution has been taken . . . ."[13]

2. *Inter-American Commission and Court of Human Rights*

Article 5(2) of the American Convention on Human Rights (*ACHR*) prohibits "cruel, inhuman, or degrading punishment or treatment"[14] and Article 26 of the American Declaration of the Rights and Duties of Man (*AD*) prohibits "cruel, infamous or unusual punishment."[15] The ACHR and AD are interpreted by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, which have

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[12] *Ilaşcu v. Moldova & Russia*, App. No. 48787/99, 40 Eur. H.R. Rep. 46, ¶ 432 (2005).

[13] *Piechowicz v. Poland*, App. No. 20071/07, 60 Eur. H.R. Rep. 24, ¶ 165 (2015).

[14] Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123. The U.S. has not yet ratified the ACHR.

[15] American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by Ninth International Conference of American States (1948), *reprinted in* OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992). The Inter-American Commission has held that the AD gives rise to binding legal obligations on the U.S. *See, e.g.*, Case 2141 (United States), Inter-Am. Comm'n H.R., Resolution No. 23/81, OEA/Ser.L/V/II.54, doc. 9 rev. 1 ¶¶ 15-17 (1981).

repeatedly affirmed that a prolonged period of detention while awaiting execution constitutes "cruel", "inhuman", "degrading" and/ or "unusual" treatment:

- *N.I. Sequoyah v. United States*, Petition 120-07, Inter-Am. Comm'n H.R., Report No. 42/10, ¶¶ 38, 49 (2010) (Admissibility Decision): a person detained on death row for 15 years is not required to exhaust domestic remedies since these delays were deemed unwarranted and were preventing the exhaustion of remedies to present a valid claim before the Commission. Also, "the claims regarding the undue delay in the process of Mr. Sequoyah's appeal and the related prolonged period of incarceration on death row are not manifestly groundless or out of order."

- *Denton Aitken v. Jamaica*, Case 12.275, Inter-Am. Comm'n H.R., Report No. 58/02, doc. 5 rev. 1 at 763, ¶¶ 133-34 (2002): "detention conditions, when considered in light of the lengthy period of nearly four years for which he has been detained on death row, fail to satisfy the standards of humane treatment." These conditions included "solitary confinement on death row, in confined conditions with inadequate hygiene, ventilation and natural light."

- *Hilaire, Constantine and Benjamin v. Trinidad and Tobago*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 167 (June 21, 2002): affirming the ECtHR's holding in *Soering v. United Kingdom* that "the 'death row

> phenomenon' is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution . . . ."

- *William Andrews v. United States*, Case 11.139, Inter-Am. Comm'n H.R., Report No. 57/96, OEA/Ser.L/V/II.98, doc. 6 rev. ¶ 178 (1998): "He spent eighteen years on death row, and was not allowed to leave his cell for more than a few hours a week. . . . [T]he Commission finds that the United States violated Mr. Andrews' right not to receive cruel, infamous or unusual punishment pursuant to Article XXVI of the American Declaration."

3. UN Human Rights Committee

Article 7 of the International Covenant on Civil and Political Rights (*ICCPR*) provides that: "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[16]

The United Nations Human Rights Committee (*UNHR Committee*) is the body responsible for monitoring States Parties' compliance with the ICCPR, and interpreting its provisions. This Committee has stated that Article 7 requires the death penalty to "be carried out in such a way as to cause the least possible physical and mental suffering," and noted that "prolonged solitary confinement of the detained or imprisoned person

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[16] On June 8, 1992, the U.S. ratified the ICCPR, subject to certain reservations, including in relation to the imposition of the death penalty. These standards are thus part of U.S. law, pursuant to the Supremacy Clause.

may amount to acts prohibited by article 7." *CCPR General Comment 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (adopted Mar. 10, 1992), ¶ 6, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008).

In relation to the United States' implementation of Article 7, the UNHR Committee has expressed concern regarding "the long stay on death row . . . ." in the U.S., "which, in specific instances, may amount to a breach of article 7." *Comments of the Human Rights Committee: United States of America*, ¶ 16, U.N. Doc. CCPR/C/79/Add.50 (Apr. 7, 1995).

In deciding an individual communication under the Additional Protocol to the ICCPR, the UNHR Committee found a breach of Article 7 in a case involving, *inter alia*, extended death row detention of nearly 12 years. *See Francis v. Jamaica*, Communication No. 606/1994 (adopted July 25, 1995), ¶¶ 9.1-9.2, U.N. Doc. CCPR/C/54/D/606/1994 (Aug. 3, 1995) (nearly 12 years on death row in dehumanizing conditions, followed by commutation of death sentence, was cruel, inhuman and degrading punishment, "bearing in mind the imputability of delays in the administration of justice on the State party, the specific conditions of imprisonment in the particular penitentiary and their psychological impact on the person concerned.").

4. UN Committee Against Torture and UN Special Rapporteur on Torture

In 1984, the U.N. adopted and opened for signature the Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment.[17] The implementation of this Convention is monitored by the U.N. Committee Against Torture (*UNCAT*).

The UNCAT has expressed "concern at the conditions of detention of convicted prisoners on death row, which may amount to cruel, inhuman or degrading treatment, in particular due to overcrowding, and the excessive length of time on death row . . . ." *Concluding observations of the Committee against Torture: Zambia*, ¶ 19, U.N. Doc. CAT/C/ZMB/CO/2 (May 26, 2008). It also stated that, where such circumstances exist, "the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation." *Id.*

Commenting specifically on the United States, the UNCAT recently expressed concern "at the continued delays in recourse procedures, which keep prisoners sentenced to death in a situation of anguish and incertitude for many years." *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶ 25, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014). The Committee concluded that "in certain cases, such situation amounts to torture . . . ." and encouraged the U.S. to "reduce the procedural delays that keep prisoners sentenced to capital punishment in death row for

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[17] In 1994, the U.S. ratified this Convention, subject to certain declarations and reservations, including a statement that the Convention does not "restrict or prohibit the [U.S.] from applying the death penalty consistent with the Constitution . , including any constitutional period of confinement prior to the imposition of the death penalty." 136 Cong. Rec. 36192-36199 (Oct. 27, 1990).

prolonged periods." *Id.* The Committee also noted concerns regarding solitary confinement. *Id.*, ¶ 20.

Similarly, the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professor Juan Mendez (*U.N. Special Rapporteur*), has recognized that "lack of notice as to the date of the execution . . ." compounds the "mental trauma of persons sentenced to death."[18] The U.N. Special Rapporteur has also emphasized that "solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions."[19] In an August 2013 report to the U.N. General Assembly, the U.N. Special Rapporteur noted that "[p]rison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment."[20] In December 2015, the U.N. General

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[18] See Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (*Special Rapporteur on Torture*), *Interim report*, ¶ 50, U.N. Doc. A/67/279 (Aug. 9, 2012) (Juan Méndez).

[19] Special Rapporteur on Torture, *Interim report*, ¶¶ 79-81, U.N. Doc. A/66/268 (Aug. 5, 2011) (Juan Méndez).

[20] Special Rapporteur on Torture, *Interim report*, ¶ 60, U.N. Doc. A/68/295 (Aug. 9, 2013) (Juan Méndez). See also United Nations Economic and Social Council, Commission on Crime Prevention and Criminal Justice, *Draft Resolution: Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, U.N. Doc. E/CN.15/2015/L.6/Rev.1, May 21, 2015, Rule 43 (prohibiting "indefinite" and/or "prolonged" solitary confinement).

Assembly passed a Resolution specifically prohibiting indefinite and/or prolonged solitary confinement.[21]

5. Decisions of courts of other common law countries

Many courts in common law countries have expressed grave concern about the length of time prisoners spend on death row prior to execution, and the consistency of such practice with constitutional provisions and/or international human rights norms:

- Canada: *United States v. Burns*, [2001] 1 S.C.R. 283, paras. 94, 122-24, 132 (Canadian Supreme Court quoting *Pratt*, and finding that *inter alia*, the potential for lengthy incarceration before execution is "a relevant consideration" in determining whether extradition to the U.S. violates the "principles of fundamental justice").[22]
- India: *Sher Singh v. State of Punjab*, A.I.R. 1983 S.C. 465 (Indian Constitution protects individuals against prolonged incarceration

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[21] Resolution 70/175 adopted by U.N. General Assembly on December 17, 2015, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, U.N. Doc. A/RES/70/175, Jan. 8, 2016, Rules 43 to 45 (defining "solitary confinement" as "confinement of prisoners for 22 hours or more a day without meaningful human contact" and "[p]rolonged solitary confinement" as "a time period in excess of 15 consecutive days").

[22] Cited in *Foster v. Florida*, 537 U.S. 990, 993 (2002) (Breyer, J., dissenting); *Glossip v. Gross*, 135 S.Ct. 2726, 2767 (2015) (Breyer, J., dissenting).

followed by execution);[23] *Jagdish v. State of Madhya Pradesh*, [2009] INSC 1608, ¶ 12 (prolonged incarceration of those sentenced to death undermines the retributive and deterrent purposes of the death penalty); *Shatrughan Chauhan v. Union of India*, (2014) 3 S.C.C. 1, [2014] INSC 44, ¶ 43 (commuting 13 death sentences, and finding that "prolonged delay in execution of sentence of death has a dehumanizing effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence.").

- Singapore: *Jabar bin Kadermastan v. Pub. Prosecutor*, [1995] SGCA 18, [1995] 1 SLR(R) 326, ¶¶ 46, 63 (Singapore Court of Appeal: "[w]e accept that condemned prisoners on death row should not be subjected to a prolonged period of imprisonment;" "undue and unconscionable delay in the execution", not attributable to the convicted, may be unconstitutional).

CONCLUSION

International and foreign decisions and opinions confirm that it is cruel and unusual punishment and/or inhuman and degrading to execute prisoners who have been incarcerated for long periods of time under a death sentence. To do so causes mental anguish and physical hardships beyond the imposed sentence of death, and amounts to cruel and unusual

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[23] Cited in *Knight v. Florida*, 528 U.S. 990, 995-96 (1999) (Breyer, J., dissenting).

punishment, particularly when combined with extended periods of solitary confinement. The international and foreign legal consensus on this issue is instructive in interpreting the Eighth Amendment, in the circumstances of this case.

Amici respectfully urge the Supreme Court of the United States to consider the jurisprudence from the Privy Council, the European Court of Human Rights, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the U.N. Committee Against Torture, the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Supreme Courts of Canada and India, all of which have concluded that execution after prolonged incarceration on death row is unconstitutional and/or contrary to international human rights norms.

These general principles of international and regional law, and the practice of other nations, are particularly compelling in the present case. The petitioner has been incarcerated for over 35 years, under a sentence of death, and for 14 years in solitary confinement. In these circumstances, executing Mr. Moore would be considered cruel and unusual punishment (or the equivalent legal standard) under the international, regional and national legal systems discussed herein.

For these reasons, *Amici* respectfully request this Court exercise its discretion in this case, and grant the petition for a writ of certiorari.

Respectfully submitted,

LUCY MARTINEZ
ANASTASIA DAVIS BONDARENKO
THREE CROWNS LLP
New Fetter Place
8-10 New Fetter Lane
London, EC4A1AZ
United Kingdom
+44 (203) 530-7959
lucy.martinez@
threecrownsllp.com

CONSTANCE DE LA VEGA
Counsel of Record
UNIVERSITY OF
SAN FRANCISCO
SCHOOL OF LAW
2130 Fulton Street
San Francisco, CA 94117
(415) 422-2296
delavega@usfca.edu

Counsel for Amici Curiae

January 19, 2016

APPENDIX

APPENDIX

Amici Organizations

The **Bar Human Rights Committee of England and Wales** (*BHRC*) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world and with defending the rule of law and internationally recognized legal standards relating to the right to a fair trial. The BHRC regularly appears in cases where there are matters of human rights concern, and has experience of legal systems throughout the world. The BHRC has previously appeared as *amicus curiae* in cases before the United States Supreme Court, including *Roper v. Simmons*, 543 U.S. 551 (2005), and *Valle v. Florida*, 132 S. Ct. 1 (2011).

The **European Criminal Bar Association** (*ECBA*) is an association of independent specialist defence lawyers in all Council of European countries. As well as benefitting from professional networking and information exchange, ECBA Members are motivated to protect and resist where necessary any attempted diminution of defence rights. To this end, ECBA has collaborated in legal projects that seek to promote human rights in criminal proceedings. This has included work on strengthening the defence of death penalty cases in China, in collaboration with the European Initiative for Democracy and Human Rights. Through this project, ECBA developed professional networks between its members and members of the Beijing Bar Association in order to raise professional standards and help defend the rights of Chinese criminal defence lawyers. Other

ECBA projects promote the administration of justice and human rights under the rule of law around the world, and its Human Rights Officer represents the ECBA on related issues before the European Court of Human Rights including through activities such as trial observation.

Human Rights Advocates (*HRA*) is a California non-profit corporation founded in 1978 with national and international membership. It endeavors to advance the cause of human rights to ensure that the most basic rights are afforded to everyone. HRA has Special Consultative Status in the United Nations and has participated in meetings of its human rights bodies for thirty years. HRA has participated as *amicus curiae* in cases involving individual and group rights where international standards offer assistance in interpreting both state and federal laws. Cases it has participated in include: *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Grutter v. Bollinger*, 539 U.S. 306 (2003); and *Cal. Fed. Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987).

The **Human Rights Institute** is the focal point of international human rights education, scholarship and practice at Columbia University's School of Law. Founded in 1998 by the late Professor Louis Henkin, the Institute supports and coordinates scholarship, expert research, and collaboration with outside individuals and advocacy groups on human rights issues in the United States and around the world, including research projects concerning the human rights implications of the death penalty. One of the core interests of the Institute is the strengthening of human rights in the United States. It focuses its work in this area on

scholarship, education, and outreach, as well as on participating in select litigation through *amicus curiae* briefs.

The **Human Rights Institute of the Paris Bar Association** (Institut des Droits de l'Homme du Barreau de Paris, *IDHBP*) was founded in 1978 by the President of the Paris Bar, under the joint aegis of UNESCO and the Paris Bar Association. From the outset, the mandate of the Institute has been human rights education, and specially the international law of human rights with lawyers and judges in France and in Europe. For some years, the Institute has been developing a policy of *amicus curiae* with the European Court of Human Rights (Cases: *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application n° 45036/98, 30 June 2005; *Sergey Zolotukhin v. Russia*, Application n° 14939/03, 10 February 2009; *Makaratzis v. Greece*, Application n° 50385/99, 20 December 2004). The Institute and members have published numerous books and articles on the international law of human rights.

The **Human Rights League** (Ligue des Droits de l'Homme, *LdH*) was founded in 1898 to defend an innocent, Captain Dreyfus, a Jew wrongly convicted of treason. The organization is a free civic actor, independent from political parties, syndicates and associations, and seeks to be a citizen implicated in political life, participating in its debates. LdH seeks to fight injustice, racism, sexism, anti-Semitism, and all other forms of discrimination, focusing its work on social citizenship and proposals for measures that support and create a strong and living democracy in France and in Europe. LdH defends secularism against xenophobic manipulations, freedoms, equality

of rights and fraternity as the foundations of a more just and united society.

The **International Bar Association's Human Rights Institute** is an international body, headquartered in London, which helps promote, protect and enforce human rights under a just rule of law, and works to preserve the independence of the judiciary and legal profession worldwide.

The **International Federation for Human Rights** (Fédération Internationale des ligues des Droits de l'Homme, *FIDH*) is an international human rights NGO federating 178 organizations from 120 countries. Founded in 1922, it is the oldest international human rights organization worldwide and works to defend all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. FIDH acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. FIDH has published reports on the death penalty in Asia, Africa, and the Middle East.

The **National Bar Council** (Le Conseil National des Barreaux, *CNB*) was established by the Law of 31 December 1990 as a public interest organisation. It represents all lawyers practicing in France and registered with one of the 164 local bars. The main mission of the CNB is to represent the legal profession in France and abroad. It contributes to the development of legislation concerning lawyers and their conditions of practice in general and intervenes on all questions concerning the judiciary or legislative provisions on which the profession

decides to express an opinion. In addition to representing the profession, the CNB has the mission to unify the rules and usage concerning the profession of lawyers and ensures the professional training of lawyers. Apart from its institutional mission, the CNB has established internal commissions working on various issues, including the Commission Libertés et droits de l'Homme created in 1997. This Commission intervenes on the adoption and amendment of legislation concerning fundamental freedoms, particularly in the field of criminal law and procedure. The Commission also advocates for the creation of a specific Bar attached to the International Criminal Court and regularly intervenes on issues of international and European law.

The **Paris Bar** (Le Barreau de Paris) is the largest Bar in France and comprises 25,000 members. The Paris Bar is often approached when human rights are endangered around the world. In terms of defending human rights, the Paris Bar cooperates and exchanges information with numerous human rights organizations. The actions undertaken by the Paris Bar are particularly aimed at supporting lawyers in the freedom, independence and dignity of their profession. It also undertakes trial observations and advocacy on several issues. It has previously appeared as *amicus curiae* before courts in several jurisdictions.

***Amici* Individuals**

The **Honourable Louise Arbour C.C., G.O.Q.** is a jurist in residence at Borden Ladner Gervais LLP. Madam Arbour sat as a justice of the Supreme Court of Canada from 1999 to 2004, on the Court of Appeal

for Ontario and the Supreme Court of Ontario. She has held senior positions at the United Nations, including that of High Commissioner for Human Rights from 2004-2008. Madam Arbour served as Chief Prosecutor for The International Criminal Tribunals for the former Yugoslavia and for Rwanda, and is a member of the Advisory Board of the Coalition for the International Criminal Court. She chaired an inquiry commission that investigated certain events at the Prison for Women in Kingston, Ontario, and has also served as a member of the Global Commission on Elections, Democracy and Security.

Emeritus Professor Robert Badinter is a retired Professor of Law at the Sorbonne (Emeritus since 1996) and a former member of the Senate of France, where he held office as the President of the Ethics Committee. He was a member of the Paris Bar and a founding member of Badinter, Bredin et parteniares (today, Bredin Prat LLP). In 1981, he was appointed Minister of Justice, during which he led an intense action to promote civil liberties in French Justice, resulting in the abolition of the death penalty in France. From 1986 to 1991, Professor Badinter was appointed President of the Constitutional Council, before being appointed by the Council of Ministers of the European Community as President of the Arbitration Commission for the Former Yugoslavia from 1992 to 1995. In 2003, he was appointed by Secretary-General Kofi Annan to an Executive Committee on the reform of the United Nations. From 1995 until 2013, Professor Badinter served as President of the Court of Conciliation and Arbitration of the Organization for Security and Cooperation in Europe (OSCE). Throughout his academic and

professional career, Professor Badinter has authored various books and articles on the death penalty ("The Execution", Grasset 1973, Fayard 1998; "The Abolition", Fayard 2000; "Against Death Penalty", Fayard 2006).

Professor Brian Burdekin AO is currently Visiting Professor at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Sweden. He is also Professorial Visiting Fellow at the University of New South Wales Faculty of Law. Professor Burdekin is also International Adviser to a number of National Human Rights Institutions in Africa, Asia and Central and Eastern Europe. From 1995 to 2003, he was Special Adviser on National Institutions to the first three United Nations High Commissioners for Human Rights. During this time, he conducted over 200 missions to 55 countries in Africa, Asia, Europe and Latin America where governments or civil society wanted to create an independent Human Rights Commission. In the past 25 years, Professor Burdekin has helped to establish such Commissions in over 70 countries and is generally considered to be the leading international expert on the subject. Prior to his appointment with the United Nations, Professor Burdekin was, from 1986 to 1994, the first Federal Human Rights Commissioner of Australia. In this capacity, in 1990-91, he was one of the key figures involved in preparing the United Nations' principles prescribing the minimum standards for national human right institutions (the Paris Principles), which were subsequently adopted by the General Assembly. From 1978 to 1986 he was principal advisor to a former Australian Prime Minister, Deputy Prime Minister and Federal Attorney General. In June

1985, Professor Burdekin was made an Officer of the Order of Australia for his services to human rights both in Australia and other countries.

Professor David Caron is the Dean of The Dickson Poon School of Law, King's College London. He was previously the C. William Maxeiner Distinguished Professor of Law at the University of California at Berkeley. He currently serves as a member of various organisations including as member of the U.S. Department of State Advisory Committee on Public International Law, and member of the Board of Editors of the American Journal of International Law. He served as the President of the American Society of International Law from 2010 to 2012.

Professor Sarah H. Cleveland is the Louis Henkin Professor of Human and Constitutional Rights at Columbia Law School. She is also the Faculty Co-Director of the Human Rights Institute. In 2014, she was nominated by the United States and elected to serve a four-year term as an independent expert on the UN Human Rights Committee. She is the Co-Coordinating Reporter of the American Law Institute's project on the *Restatement Fourth, Foreign Relations Law of the United States*, and the U.S. Member on the European Commission for Democracy through Law (Venice Commission) of the Council of Europe. From 2009-2011 she served as Counselor on International Law to the Legal Adviser of the U.S. Department of State, and she continues to serve as a member of the Secretary of State's Advisory Committee on International Law. She is a member of the Executive Council of the American Society of International Law, and a Council Member of the International Bar Association's Human Rights

Institute. She has published widely on issues relating to international human rights law and the use of international law in U.S. constitutional interpretation, including co-authoring *Human Rights* (2d. ed. 2009, with Louis Henkin and others), and Sarah H. Cleveland, *Our International Constitution,* 1 Yale J. Int'l L 31 (2006).

Mark George QC is an English-qualified criminal law barrister of more than 35 years call. He has been instructed in a number of serious criminal law cases and high-profile inquests and regularly acts as defence counsel in serious criminal trials. He is consistently recommended as a highly experienced criminal trial advocate. Mr. George has a strong interest in death penalty cases in the United States, stemming from a 1998 capital murder trial in Texas in which Mr. George assisted with preparation of the case for trial. Mr. George is a trustee of *Amicus,* an NGO set up to provide assistance to those practising in the field of capital defence in the USA. He helps to arrange internships for young lawyers to assist with US death penalty trials and appeals and regularly teaches on *Amicus* training courses across the UK. He has also written a number of articles for the *Amicus* Journal on aspects of US death penalty law. Mr. George has been involved with writing *amicus curiae* briefs in three US Supreme Court cases: on behalf of the Bar Human Rights Committee of England and Wales (*BHRC*) in *Graham v. Florida* concerning life without parole for those aged under 18; on behalf of the BHRC and Reprieve in the case of *Manuel Valle v. Florida* concerning an individual on death row for over 33 years; and on behalf of the BHRC in *Miller v. Alabama; Jackson v. Hobbs*

concerning sentencing of juveniles convicted of murder.

Professor Guy S. Goodwin-Gill is Emeritus Fellow of All Souls College, Oxford and Emeritus Professor of International Refugee Law in the University of Oxford. He is also a Barrister at Blackstone Chambers, London, where he practises in public international law generally, and in human rights, citizenship, refugee and asylum law. He is an Honorary Associate of the Refugee Studies Centre, Oxford, and an Honorary Senior Fellow of Melbourne Law School, University of Melbourne, and was a Visiting Professorial Fellow at the University of New South Wales. In the recent past, he has held the W. J. Ganshof van der Meersch Chair at the Université Libre de Bruxelles (2010), was Director of the Centre for Research and Studies at the Hague Academy of International Law (2010), Visiting Professor at the Geneva Academy of International Humanitarian Law and Human Rights from 2008-11, and Professor of Asylum Law at the University of Amsterdam (1994-99). He is the Founding Editor of the *International Journal of Refugee Law* (Oxford University Press) and was Editor-in-Chief from 1989-2001. Professor Goodwin-Gill has written extensively on international law issues, including treaty interpretation, refugees, migration, citizenship, statelessness, elections, and child soldiers.

Professor Carolyn Hoyle is Director of the Centre for Criminology at the University of Oxford. She has published empirical and theoretical research on a number of criminological topics including domestic violence, policing, restorative justice, the death penalty, and wrongful convictions. She is co-author of

the book *The Death Penalty: A Worldwide Perspective* (5th edn Oxford University Press 2015).

Professor Julian Killingley is Professor of American Public Law at Birmingham City University and a member of the Birmingham City University Centre for American Legal Studies. He has particular expertise in American criminal defence litigation, American constitutional law and the death penalty in America. Professor Killingley is the Director of the Academic Panel of *Amicus*, an NGO set up to provide assistance to those practising in the field of capital defence in the USA. Professor Killingley has written a number of published articles and book chapters on aspects of US death penalty law. He has also authored numerous *amicus curiae* and Writ of Certiorari briefs filed in the US Supreme Court and Federal District Courts on the law governing the death penalty and punishment of juvenile offenders: on behalf of Amnesty International *et al* in *Graham v. Florida* concerning life without parole for those aged under 18; on behalf of the Bar Human Rights Committee of England and Wales (*BHRC*) in *Deck v. Missouri* concerning the human rights implications of shackling a defendant in the sentencing phase of a capital trial; and on behalf of the BHRC and the International Human Rights Committee of the Law Society of England and Wales in *Roper v. Simmons*, concerning the sentencing of a juvenile defendant to death.

Professor Robert McCorquodale is the Director of the British Institute of International and Comparative Law. He is also a Professor of International Law and Human Rights at the University of Nottingham and a barrister at Brick Court Chambers in London. He has published widely

on public international law and human rights, provided advice and training on public international law around the world, and is the Co-General Editor of BIICL's major publication: the International and Comparative Law Quarterly.

Professor Juan Méndez was appointed the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on 1 November 2010. He was previously the Co-Chair of the International Bar Association's Human Rights Institute from 2010-2011, the President of the International Center for Transitional Justice until May 2009, and the Special Advisor on the Prevention of Genocide to Kofi Annan between 2004 and 2007. He is currently a Professor of Human Rights Law in Residence at the American University and has taught International Human Rights Law at Georgetown Law School and the Oxford Masters Program in the United Kingdom. He has received several human rights awards including the Goler T. Butcher Medal from the American Society of International Law (2010) and a Doctorate Honoris Causa from the University of Quebec in Montreal (2006).

Geoffrey Robertson QC is the founder and joint head of Doughty Street Chambers, a leading human rights chambers in the UK. He has had a distinguished career as a trial and appellate counsel, an international judge, and author of leading textbooks, including "*Crimes Against Humanity – The Struggle for Global Justice*", published in the US by the New Press. He won a silver gavel from the American Bar Association for his book "*The Tyrannicide Brief*" and received the 2011 New York Bar Association award for distinction in international law and affairs. He is a Master of the Middle Temple.

He has argued many landmark cases in media, constitutional and criminal law, in the European Court of Justice; the European Court of Human Rights; the Supreme Court (House of Lords and Privy Council); the UN War Crimes courts; the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and in the highest courts of many commonwealth countries. He was counsel for the appellants in *Pratt v. Attorney-General for Jamaica*.

Emeritus Professor Sir Nigel Rodley KBE, is Emeritus Professor of Law and Chair of the Human Rights Centre at the University of Essex. He is a member of the United Nations Human Rights Committee. In March 1993, Sir Rodley was designated Special Rapporteur on Torture by the UN Commission on Human Rights, serving in this capacity until 2001. Since 2001 he has been a member of the UN Human Rights Committee, a position to which he has been re-elected three times by the States Parties to the International Covenant on Civil and Political Rights (as the UK's nominated candidate). He was awarded a KBE in the 1998/99 New Year's Honours List, "for services to human rights and international law". In 2005 he was joint recipient of the American Society of International Law's Goler T. Butcher medal for "outstanding contributions to ... international human rights law".

Professor William Schabas is Professor of International Law at Middlesex University in London. He currently holds positions at Leiden University, National University of Ireland Galway, Paris School of International Affairs (Sciences Politiques), Chinese Academy of Social Sciences in Beijing, Kellogg College of the University of Oxford, Northumbria

University, and the Université du Québec à Montréal. He is the author of more than twenty books on international human rights law, including *The Universal Declaration of Human Rights: travaux préparatoires* (Cambridge University Press, 2013), *Introduction to the International Criminal Court* (Cambridge University Press, 4th ed, 2011), *Genocide in International Law* (Cambridge University Press, 2nd ed, 2009) and *The Abolition of the Death Penalty in International Law* (Cambridge University Press, 3rd ed, 2003). He has also published more than 350 articles in academic journals, principally in the field of international human rights law and international criminal law. Professor Schabas has worked as a consultant on capital punishment for the United Nations Office of Drugs and Crime, and drafted the 2010 and 2015 reports of the Secretary-General on the status of the death penalty.

Professor Theo van Boven is Honorary Professor of International Law at the International & European Law Department, Maastricht University. From December 2001 to December 2004, Professor van Boven was UN Special Rapporteur against Torture. Earlier, he served as Director of Human Rights of the United Nations and was a member of the United Nations Sub-Commission for the Promotion and Protection of Human Rights and of the Committee on the Elimination of Racism and Discrimination. He was also a visiting professor at Harvard Law School (1987) and at New York University Law School (1990), and has written extensively on international human rights and humanitarian law.

Dr Philippa Webb is Reader (Associate Professor) in Public International Law. Dr Webb served as the

Special Assistant and Legal Officer to Judge Rosalyn Higgins during her Presidency of the International Court of Justice (2006-2009) and, prior to that, as the Judicial Clerk to Judges Higgins and Owada (2004-2005). She was also the Associate Legal Adviser to Prosecutor Luis Moreno-Ocampo at the International Criminal Court (2005-2006). Dr Webb is on the International Advisory Panel for the American Law Institute's project *Restatement Fourth, Foreign Relations Law of the United States*.